

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of the Commission's) WT Docket No. 97-82
Rules Regarding Installment Payment)
Financing For Personal Communications)
Service (PCS) Licensees)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR FURTHER RECONSIDERATION

The C Block Alliance ("Petitioners"),¹ by its attorneys, and pursuant to Section 1.429 of the Commission's Rules,² respectfully submits this Petition for Further Reconsideration ("Petition") of the Commission's *Order on Reconsideration of the Second Report and Order* ("Reconsideration Order"), released March 24, 1998. The Commission should reexamine its decisions in this proceeding and postpone the established election deadline and date for resumption of payments until integrity and equity is restored to the PCS C Block licensing process. To accomplish this crucial task, the Commission must re-focus on the central objective in the C Block auction: the expedition of service to the public by entrepreneurial entities willing to deploy the infrastructure necessary to bring new services to the public. In support thereof,

^{1/} The members of the C Block Alliance are listed in Attachment A.

^{2/} 47 C.F.R. §1.429 (1997).

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Petitioners show the following:

I. The Commission Should Postpone Election and Payment Deadlines Until Outstanding Issues Are Resolved.

In light of the general chaos surrounding the C Block auction and the number of unresolved issues, including the Commission's consideration of the proposed resolution of the bankruptcy of Pocket Communications,³ and the effect of the recent Dallas, Texas bankruptcy court ruling concerning GWI PCS, Inc. ("GWI"),⁴ it is premature and harmful to the public interest to require licensees to make binding elections by June 8, 1998.⁵ The GWI approach (a significant reduction in the installment debt obligation) represents a viable fifth alternative to C Block licensees; until the GWI issue is finally resolved, it is unreasonable to require licensees to make irrevocable elections.

Regardless of the ultimate installment payment requirements established in this proceeding, C Block licensees remain subject to the Commission's build-out requirements.⁶ Accordingly, the public interest will not be disserved by allowing further deferral of decisions regarding spectrum give-back or payment options. It is incumbent upon the Commission to restore order and fairness to the C Block license payment process. Only upon the resolution of

³/ *Public Notice*, DA 98-547 (released March 23, 1998).

⁴/ *In Re GWI PCS, Inc., Debtor*, Bankr., N.D. Texas, Dallas Div., BK NO. 397-39676-SAF-11, ADV. NO. 397-3492.

⁵/ Individual licensees may already have made the determination that full amnesty is the only available option, given market erosion or other business reasons. These individual licensees should be allowed to return their licenses on or after June 8, 1998, but no licensee should be obligated to make an election at that time.

⁶/ 47 C.F.R. §24.203 (1997).

all outstanding issues, and the resulting restoration of integrity to the C Block licensing process, will licensees be able to make reasoned elections regarding partial license give-backs and payment options.

Similarly, the Commission's requirement to resume installment payments on July 31, 1998 is inappropriate and discriminatory. The July 31, 1998 date is wholly arbitrary, driven only by the Commission's desire to return to "normalcy," a quixotic notion under current circumstances. Moreover, the Commission consistently ignores the fact that many C Block licensees already have suffered disadvantages by virtue of having followed the Commission's rules, including having made the March, 31, 1997 payment in accordance with established schedules. The Commission must recognize this fundamental disparity and take all measures necessary to restore integrity and fairness to the C Block payment process. Accordingly, no C Block licensee should be required to make any further payments until all payment issues, including the pending questions regarding the appropriate interest rate for licenses granted on September 17, 1996, are clarified and resolved.

II. The Commission Should Restore Integrity and Marketplace Reality To The C Block Licensing Process.

To effectively and expeditiously resolve these issues, both Congress and the executive branch of the Federal government, including the Commission, must recognize the reality of the financial circumstances facing C Block licensees and the fact that collection of the net amount raised by the C Block auction is no longer a reality. The decision of the Texas bankruptcy court regarding GWI reflects the realities of the financial marketplace and results in a preferable and sensible solution -- the recognition that the market value of the C Block licenses had diminished

by material amounts at the time the licenses were issued. Equity and fairness demand that the Commission recognize that the same business and financial realities affect each and every C Block licensee; accordingly, the same solution and alternatives should be made available to each C Block licensee.

The decision of the GWI court also recognizes commercial realities and the manner in which business is conducted. In response to requests for proposals, or opportunities to bid, aggressive bidders place aggressive bids -- and win. An aggressive bidder may find itself overextended and may choose to reorganize to accommodate business realities and business demands. In the context of a reorganization within the protection of the bankruptcy laws, losing bidders have no inherent legal rights as a result of the winner's need or decision to reorganize. Similarly, unforeseen but existing market realities do not give rise to a right to protest the accommodations which are required to ensure the public interest in fostering the provision of new services by small and entrepreneurial businesses. Ignoring marketplace realities places the overall goal of the C Block process at risk, jeopardizing the ability of entrepreneurs to provide service to the public. Swift corrective action is critical to provide the opportunity for entrepreneurial entities to compete with the A and B Block licensees, as envisioned by Congress.

III. Equity Demands Consistent Solutions For All C Block Licensees.

The FCC is obligated to create a workable solution to the problems faced by all C Block licensees or, at a minimum, provide for the application of the reasonable solution derived by the GWI bankruptcy court to all C Block licensees. Failure to act creatively and promptly will simply foster a situation of increasing administrative burdens for both licensees and the FCC and further impede the delivery of competitive PCS services to the public. Unless an appropriate

solution is available to all licensees, each and every licensee may be forced to deal individually with the issues of reorganization, including individual filings with the bankruptcy courts for creditor protection and reorganization rights, and subsequent involvement by and filings with the Commission. It is imperative that the Commission rise to the task of creatively solving, or at least controlling, the existing and expanding chaos.

The GWI approach is a rational alternative. The bankruptcy court recognized that virtually all C Block licensees are eligible for similar treatment under bankruptcy law.⁷ The GWI alternative presents an opportunity for the Commission to restore administrative efficiency and adopt a fair resolution of all outstanding issues regarding the C Block auction.⁸

It is impossible to return to the *status quo ante*; neither the Commission nor any successful or unsuccessful bidders can turn the clock back to the situation that existed prior to the auction. All participants must accept the current state of affairs and work to achieve the best solutions possible to further the public interest policy objectives that underlie and drive this process -- the dissemination of new services to the public and the provision of these services by entrepreneurs and new entrepreneurial entities. The Texas bankruptcy court offers a reasonable solution to the current conundrum and provides the legal foundation upon which the

^{7/} "The restrictions under CFR for small businesses to qualify for the discounts and credit of these auctions virtually assured if the market conditions deteriorated between the time of the auction and completion of the regulatory process, they would likely be undercapitalized or insolvent by Section 548 standards." *In Re GWI PCS, Inc., Debtor*, Bankr., N.D. Texas, Dallas Div., BK NO. 397-39676-SAF-11, ADV. NO. 397-3492.

^{8/} "The FCC may actually be able to rely on available debtor/creditor remedies to address the problems of this auction without the need for further remedial regulatory auction. The FCC may then proceed with its primary regulatory responsibilities." *Id.*

Commission may act to ensure that the public interest is served, while simultaneously enhancing the integrity of the process.

In recognition of the fact that the GWI decision is subject to the appeals process, Petitioners suggest that the uncertainty which continues to permeate C Block licensing can be abridged by the Commission's adoption of the GWI solution as applicable to all C Block licensees. The public interest will be served, and the integrity of the Commission's processes enhanced, by returning focus to building systems which provide service to the public.

IV. Deferral of Payments is a Reasonable Alternative.

As an alternative to recognizing the *de facto* devaluation of C Block licenses, the Commission should recognize that it is clearly time to move forward and enable C Block licensees to focus on building out their licensed areas in an entrepreneurial spirit which recognizes the realities of the way business is conducted. Regardless of the Commission's previous consideration of this proposal, it is now, in the context of current developments, appropriate to defer all payments on licenses until the end of the initial license period. The Commission should simply require that all debt and accrued interest, however ultimately determined (at the appropriate rate of interest and at the GWI discounted price or otherwise), is due at the end of the initial license term. In a separate proceeding, the Commission may determine all appropriate financing terms. Licensees will then be freed to focus on the business of expediting service to the public and concentrate resources in building the necessary infrastructure to provide competitive wireless services.

Petitioners urge the Commission to adopt a fair and practical approach, one which affords equal treatment to all C Block licensees. Accordingly, the Commission should either

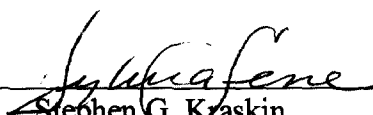
adopt the GWI valuation approach, or defer all payments until the end of the initial license term to allow licensees to focus on fulfilling their commitment to bring service to the public.

V. Conclusion

The public interest will be served by indefinite postponement of the PCS C Block election and payment resumption deadlines. In addition, regulatory fairness and integrity demand consistent application of solutions to all C Block licensees. Swift and appropriate action by the Commission is required to restore integrity to the process in order to achieve the most important goal of the C Block auction: the deployment of new services by new entrepreneurial and small business service providers.

Respectfully submitted,

THE C BLOCK ALLIANCE

By 
Stephen G. Kraskin
Sylvia Lesse
Margaret Nyland

Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, NW
Suite 520
Washington, DC 20037
202/296-8890

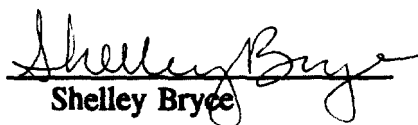
May 8, 1998

ATTACHMENT A

21st Century Telesis Joint Venture
Communications Venture PCS Limited Partnership
Duluth PCS, Inc.
Enterprise Communications Partnership
Meretel Communications, L.P.
Mountain Solutions, Ltd.
Pine Belt PCS, Inc.
Poka Lambro PCS, Inc.
Polycell Communications, Inc.
RFW INC.
Roberts-Roberts & Associates, LLC
SOWEGA Wireless Communications, L.L.C.
St. Joseph PCS, Inc.
Third Kentucky Cellular Corp. d/b/a Wireless 2000 PCS
West Virginia PCS, Inc.
Wireless Ventures, Inc.

CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Further Reconsideration of the C Block Alliance" was served on this 8th day of May 1998, by first class, U.S. Mail, postage prepaid to the following parties:


Shelley Bryce

William E. Kennard, Chairman *
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Susan Ness, Commissioner *
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Gloria Tristani, Commissioner *
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Harold Furchtgott-Roth, Commissioner *
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Michael K. Powell, Commissioner *
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Daniel B. Phythyon, Chief *
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Kathleen O'Brien Ham *
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5322
Washington, DC 20054

International Transcription Services *
Federal Communications Commission
1919 M Street, NW, Room 246
Washington, DC 20554

William R. Richardson, Jr.
Lynn R. Charytan
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037
Counsel for Pocket Communications, Inc.

Joe Wielebinski
Munsch, Hardt, Kopf, Harr & Dinah
4000 Fountain Place
1445 Ross Avenue
Dallas, TX 75202
Counsel for General Wireless, Inc. and
GWL PCS

* via hand delivery